

REMARKS

The non-final Office Action of January 12, 2009, has been carefully reviewed and these remarks are responsive thereto. Reconsideration and allowance of the instant application are respectfully requested.

Amendments to the Claims

Claims 1-3, 5-13, and 15-22 are currently pending. Claims 21-22 are new. Claims 4 and 14 have been cancelled. Claims 1, 5, 8, 9, 10, 11, 15, 18, 19, and 20 have been amended.

Claims 1, 3-8, 11, and 13-18

Claims 1, 3-8, 11, and 13-18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Number 5,561,791 to Mendelson et al (hereinafter *Mendelson*) in view of the Nov. 13, 1994 draft of the ISO/IEC 13818-1 International Standard (hereinafter *the ISO Standard*), and U.S. Patent Number 5,838,314 to Neel et al (hereinafter *Neel*). In order to establish a *prima facie* case of obviousness under 35 U.S.C. § 103(a), the prior art must teach or suggest all the claim limitations. See MPEP § 2143.03. The rejection is respectfully traversed because a *prima facie* case of obviousness has not been established.

Amended claims 1 and 11 both recite “dividing a content stream into a plurality of extents that represent a fixed length of time.” Although the Action alleges that the protocol data units of *Mendelson* are extents, protocol data units do not represent a fixed length of time, as recited in amended claims 1 and 11. The cited portion of *Mendelson* fails to teach or suggest extents that represent a fixed length of time. *The ISO Standard* and *Neel* fail to cure this deficiency. Because the cited references fail to teach each and every element of amended claim 1, a *prima facie* case of obviousness has not been established. Applicants respectfully request the rejection of claims 1 and 11 be withdrawn.

Claims 3-8 depend from claim 1, and claims 13-18 depend from claim 11. These claims are allowable over the art of record for at least the same reasons as their base claims, and further in view

of the novel features recited therein. Applicants therefore request the rejection of claims 3-8 and 13-18 be withdrawn.

Claims 2, 9, 10, 12, 19, and 20

Claims 2 and 12 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Mendelson* in view of *the ISO Standard* and *Neel*, and further in view of U.S. Patent Number 5,678,061 to Mourad. Claims 9 and 19 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Mendelson* in view of *the ISO Standard* and *Neel*, and further in view of U.S. Patent Number 6,717,947 to Ghodrat et al. Claims 10 and 20 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Mendelson* in view of *the ISO Standard* and *Neel*, and further in view of U.S. Patent Number 6,275,507 to Anderson et al. Applicants respectfully traverse these rejections.

Each of these claims depends from either independent claim 1 or independent claim 11. These claims are allowable over the art of record for at least the same reasons as their ultimate base claim, and further in view of the novel features recited therein. Applicants therefore request the rejection of claims 2, 9, 10, 12, 19, and 20 be withdrawn.

New Claims 21 and 22

New claims 21 and 22 depend from independent claims 1 and 11, respectively. These claims are allowable over the art of record for at least the same reasons as their base claims, and further in view of the novel features recited therein.

Double Patenting

Claims 1, 3, 5, and 7 stand rejected on the ground of nonstatutory obviousness-type double patenting as unpatentable over claims 4, 6, and 9 of U.S. Patent Number 6,604,224 in view of *Mendelson* and *the ISO Standard*. This rejection is improper. Obviousness-type double patenting is based on a comparison between the reference claim(s) (presumably claim 4, 6, and/or 9 of the '224 patent) and the examined claim. MPEP § 804 (II)(B)(1). Prior art references, such as *Mendelson*, are not part of the analysis, which is explained in MPEP § 804(II)(B)(1). Considering prior art

references as part of a double patenting rejection is therefore improper. In any event, at least in light of the amendment to claim 1, claims 1, 3, 5, and 7 are patentably distinct from claims 4, 6, and 9 of the '224 patent.

Withdrawal of Previous Remark

In the RCE Submission Under 37 C.F.R. § 1.114, which Applicants filed on November 12, 2008 in response to the final Office Action Dated September 16, 2008, the following remark appeared at page 6: “an extent contains packetized information appropriate to a temporal period of about 2 seconds.” To the extent this remark suggests that extents cannot contain packetized information appropriate to other lengths of time, applicants respectfully withdraw the remark. As the specification makes clear, 2 seconds is only an example of an amount of time that could be represented by an extent. *See*, e.g., p. 4, lines 3-8; p. 9, lines 8-10. Indeed, the Office recognized this and rightfully disagreed with any such limitation on the meaning of extent in the January 12, 2009 Office Action.

CONCLUSION

All rejections having been addressed, applicants respectfully submit that the instant application is in condition for allowance, and respectfully solicit prompt notification of the same. However, if for any reason the Examiner believes the application is not in condition for allowance or there are any questions, the examiner is requested to contact the undersigned at (202) 284-3000.

Respectfully submitted,

BANNER & WITCOFF, LTD.

Dated: April 13, 2009

By: /Gary D. Fedorochko/
Gary D. Fedorochko
Reg. No. 35,509

1100 13th St. N.W.
Suite 1200
Washington, D.C. 20005-4051
Tel: (202) 824-3000
Fax: (202) 824-3001